

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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January 10, 2018

## PERMITTED ACTIVITIES FOR BRE LICENSEE'S ASSISTANTS

The California Bureau of Real Estate has for many years addressed what activities a BRE licensee may delegate to an unlicensed assistant. CA Business and Professions Code section 10133.1(c) and particularly Title X, Section 2841 of California Regulations, address the subject in some detail. However, this week the BRE has again chosen to address the subject at length. The BRE has prepared detailed Guidelines which were published and appear at:

<http://calbre.ca.gov/files/pdf/adv/Guidelines%20for%20Unlicensed%20Assistants%20-%20Updated%202018.pdf>.

They are largely similar to Section 2841 but serve as an updated and somewhat expanded version. To the extent you are a BRE licensee and use “assistants”, the Guidelines should be reviewed in full. Even though they are somewhat specific, the BRE cautions that *“individuals engaging in business as a real estate broker are ... similarly charged with the responsibility to supervise and control all activities performed by their employees and agents in their name during the course of a transaction for which a real estate license is required,*

*whether or not the activities performed require a real estate license*". BRE says the Guidelines are nothing more than defined activities which generally do not come within the term "real estate broker," when performed with the broker's knowledge and consent.

To briefly summarize, and again we caution you should read the Guidelines in full:

- ✚ **Cold Contacting of Potential Prospects.** Unlicensed assistants may assist in the performance of cold contacting potential prospects. Cold contacting of potential prospects is the making of telephone calls or the use of electronic or social media to canvass for interest in using the services of a real estate broker. Should the person responding indicate an interest in using the services of a broker, or if there is an interest in ascertaining the kind of services a broker can provide, the person answering with interest shall be referred to a licensee. The canvassing may only be used to develop general information about the interest of the person answering and may not be used, for solicitation purposes.
- ✚ **Open Houses.** Unlicensed assistants may assist licensees at an open house intended for the public by placing signs, greeting the public, providing factual information from or handing out preprinted materials prepared by or reviewed and approved for use by the licensee. During the holding of an open house, only a licensee may show or exhibit the property, discuss terms and conditions of a possible sale, discuss other features of the property, such as its location, neighborhood or schools, or engage in any other conduct which is used, designed or structured for solicitation purposes with respect to the property.
- ✚ **Comparative Market Analysis.** Unlicensed assistants may make, conduct or prepare a comparative market analysis.
- ✚ **Communicating With the Public.** Unlicensed assistants may provide factual information to others from writings prepared by the licensee.
- ✚ **Arranging Appointments.** Unlicensed assistants may schedule appointments for licensees to meet with a principal or party to the transaction. As directed by the licensee, an unlicensed assistant can arrange reports and services from a third party, or for the provision of services in connection with the transaction, such as a pest control inspection and report, a roof inspection and report, a title inspection and/or a preliminary report, an appraisal and report, a credit check and report, or repair or other work to be performed to the property as a part of the sale.

- ✚ **Access to Property.** Unlicensed assistants can be present to let into the property a person who is either to inspect the property for a report, or who is to perform work to the property in connection with the transaction.
- ✚ **Advertising.** Unlicensed assistants can prepare advertising for which the broker was employed, if the advertising is reviewed and approved by the broker.
- ✚ **Preparation of Documents.** Unlicensed assistants can prepare documents and instruments under the supervision and direction of the licensee if the final documents or instruments will be reviewed or approved by the licensee prior to the documents or instruments being presented to a principal or party to the transaction.
- ✚ **Delivery & Signing Documents.** Unlicensed assistants may mail, deliver, pick up, or arrange the mailing, delivery, or picking up of documents, including obtaining signatures to the documents. The activity should not include a discussion of the content, relevance, importance or significance of the document.
- ✚ **Trust Funds.** Unlicensed assistants can accept, account for, and or provide a receipt for trust funds received from a party to the transaction.

Once again, if you will rely on this guidance for use with your unlicensed assistants, it should be reviewed in full and with care.

## ABOUT ALT & ASSOCIATES

Alt & Associates publishes the *Lenders Update* via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

- ✚ Regulatory assistance, both state and federal
- ✚ Compliance work
- ✚ Operational advice
- ✚ Transactional work Agreements such as Loan Officer
- ✚ Compensation Agreements etc.
- ✚ Various forms of employee, officer, and/or manager contracts
- ✚ Litigation representation

You may direct any questions or comments directly to:

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